IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9061 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHREE KALOL DUDH VAPARNARONI SAHAKARI MANDALI LIMITED - Petitioner(s)
Versus
TEJPAL SHIVLAL - Respondent(s)

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Appearance :
MR PRAKASH K JANI for Petitioner(s) : 1,
MR SHIRISH JOSHI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 26/09/2006

ORAL JUDGMENT

1. In this petition, the petitioner-Cooperative Society has challenged an order dated 17-2-1995

passed by the Board of Nominees as upheld by the judgement dated 14-7-1997 passed by the Cooperative Tribunal.

2. The petitioner-society has preferred a Lavad Suit against the respondent herein to recover a sum of Rs.89,668/-. It is the case of the petitioner-society that respondent was a cashier of the society at the relevant time. He discharged such duties for the period between 8-10-1979 to 14-6-1980. On 14-6-1980, when the accounts were closed, there was a sum of Rs.68,991/- missing. To ensure recovery thereof from the respondent, the petitioner had instituted a Lavad Suit.

2.1 The Board of Nominees however, by its impugned judgement dated 17-2-1995 rejected the suit filed by the petitioner-society. Appeal filed by the petitioner before the Cooperative Tribunal also came to be rejected by judgement dated 14-7-1997 which has been impugned in this petition also. The Board of Nominees in the

impugned judgement observed that the respondent was discharging duties as temporary cashier between 8-10-1979 to 13-5-1980. He was thereafter, suspended. The Board of Nominees did not find sufficient evidence on record against the respondent to permit recovery.

2.2 The petitioner-society had placed heavy reliance on the two admissions made by the respondent in the form of letter dated 15-9-1980 written by him as well as a statement that he gave to the auditor. Board of Nominees found that neither of these two so called admissions established the liability of the respondent. It was found that the respondent only made certain entries in the ledger which would not amount to misappropriation. It was found that if at all, it was the responsibility of Chairman and Secretary of the Society to make necessary recoveries and respondent cannot be held liable for the same. In short, the Board of Nominees found that case against the respondent was not proved beyond doubt. On this basis, the suit

filed by the petitioner came to be rejected.

3. It is not in dispute that at the relevant time when shortfall in the funds of the society was detected, respondent was discharging his duties as cashier. It is also not in dispute that he himself in his own handwriting had issued certain receipts for having received money from different units of milk collection centre. However, correspondingly the amounts were not found credited in the accounts of the Society. Being a cashier, it was therefore, primarily his responsibility to explain the missing sum. The respondent gave a clear statement in his own handwriting on 15-9-1980. In presence of the President, Vice President and Secretary of the Society, he gave a writing that he had handled the accounts of the society from 8-10-1979 to 13-5-1980. He also accepted that for the said period whatever the financial liabilities arise, are acceptable to him, whatever the shortfall will be his responsibility. He stated that he had given such a writing with full understanding

and in presence of President, Vice President and Secretary of the Society. This writing was counter signed by the said officer bearers of the Society. Subsequently also, before the auditor, the respondent gave a detailed statement. In the said statement also, besides giving further details of nature of responsibilities carried by him, he stated that he used to accept money from the administrator between 8 O' Clock to 12 O' Clock in the morning. In token of accepting money, he used to give receipts in the form of printed receipts of the Society by putting a stamp of having received money. He used to discharge the duties of depositing this amount so collected with the Bank. He admitted that he had given writing on 15-9-1980 to the effect that he is responsible for financial transactions between 8-10-1979 to 13-5-1980 and would be liable for any shortfall during the said period. Before the auditor he once again admitted that after taking stock of the accounts with Secretary of the society, whatever the outstanding amount, he has to

account for the same. Such accounts are a matter of personal transaction between him and the Secretary. He admitted that on 14-6-1980 with him there was cash on hand of Rs. 68,991/-. However, only after settling accounts with the Secretary of the Society, he can ascertain his own personal liability. Remaining liability would be that of the Secretary. He stated that the statement is given by him in his own handwriting with full understanding.

4. Having heard learned advocates appearing for the parties and having perused the impugned orders and other material on record, I find that Courts below committed an error in rejecting the suit of the petitioner-society. I have also perused the original record with the assistance of learned advocate Shri Joshi for the respondent. I am however, unable to persuade myself to accept the defence of the respondent. Both the Courts below stressed the question of independent evidence against the respondent to fasten his personal liability for the missing

fund of the society. I find that whole approach was apparently erroneous. The respondent had in no uncertain terms substantially admitted his liability in writing.

5. The fact that he was cashier of the petitioner-society at the relevant time is not in dispute at all. In May 1980, amount of Rs.68,991/- of the society was found missing. There is absolutely no doubt about this aspect of the matter also. For the said amount, respondent had issued receipts in the form of token for having received such amount from the centre supplying milk. Heavy burden of duty therefore, lies on the respondent to explain the missing sum. Instead of giving a plausible and acceptable explanation, he stated before the President, Vice President and Secretary of the Society that he is responsible for such an amount. Such a writing was given by him on 15-9-1980. This statement was not qualified and he accepted his liability unconditionally. Quite sometime thereafter, before admitting also, on 6-6-1981,

he reiterated his involvement. In addition to admitting having written the said admission dated 15-9-1980, he also once again admitted that whatever be the shortfall, would be his responsibility. He however, sought to clarify his admission by stating that entire amount was a matter of understanding of accounts between him and the Secretary of the Society. Other than this defence, respondent did not put up any other defence in his further statement before the auditor also. Both these statements remained unchallenged and the respondent never urged that the statements were given under duress. Only before the Board of Nominees, the respondent put up the defence of statements not reflecting true and correct facts. Earlier than this, respondent never sought to resile from his admission.

6. I find that the confessional statements of the respondent were clear, unequivocal and unconditional. At no stage earlier than the stage of recording evidence before the Board of Nominees, this respondent made any attempt to

resile from the statement made by him. He has not only given statement in writing on 15-9-1980 before the auditor, in his further written statements recorded on 6-6-1981 he repeated his earlier statement and admitted to having given the same. In both the statements, he admitted that he was responsible for the cash being collected by the society; that in May 1980 an amount of Rs. 68,991/- was missing; that to the extent of the said amount he had already issued receipts in token of already having received such amount; that it was his responsibility to deposit the amount collected for and on behalf of the society to deposit the same with the Bank. In later part of the statement before the auditor, he tried to explain his conduct by suggesting that entire missing amount is a matter of accounts between him and the Secretary. However, he never elaborated on this aspect of the matter, nor in the deposition apparently he threw any further light on settlement of accounts between him and the Secretary. In view of this overwhelming

evidence in the form of clear admission of respondent, it was not open for the Courts below to seek independent evidence for involvement of the respondent. The respondent had never successfully attempted to resile from the statement. His attempt if at all was rather belated and completely lacking any material particulars. The Courts below therefore, ought not to have discarded such important evidence and required the petitioner to establish the case against the respondent through further evidence. In my view, the findings of fact suffered from perversity since important evidence was completely discarded by the Courts below. I see no possibility of ignoring such important admissions made by the respondent. Since the respondent had never successfully resiled from his admissions, it was not possible for the Courts below to ignore such admissions. There was no further necessity of any independent evidence and I therefore, find that Courts below committed grave error in rejecting the suit of the petitioner-society. When the

respondent was working as cashier, when admittedly during his tenure substantial amount of the society is found missing, when he admits to have given receipts in token of having received such amount, when he admitted that he had not deposited such amount in the Bank, I fail to see any further requirement of independent evidence to establish involvement of the respondent.

7. In the result, the petition is required to be and is hereby allowed. The impugned judgement dated 17-2-1995 passed by the Board of Nominees and judgement dated 14-7-1997 passed by the Cooperative Tribunal are quashed. The respondent shall pay a sum of Rs. 89,688/- to the petitioner-society with simple interest at the rate of 12% p.a. from the date of suit till actual payment. The Board of Nominees shall accordingly draw a formal decree against the respondent.

8. The petition is disposed of accordingly. Rule made absolute accordingly with no order as to

costs.

R & P be returned to the Court of Board of Nominees, Mehsana.

(Akil Kureshi, J.)

(raghu)